
STATUTORY INSTRUMENTS

2002 No. 2978

The School Companies Regulations 2002

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the School Companies Regulations 2002 and shall come into force on 20th January 2003⁽¹⁾.

Interpretation

2.—(1) In these Regulations—

“the 2002 Act” means the Education Act 2002;

“the 1998 Act” means the School Standards and Framework Act 1998⁽²⁾;

“the constitution of a school company” means the company’s memorandum and articles of association;

“executive director” means a director who provides services to the company for remuneration or other benefits whether or not under a contract of service;

“a further education institution” means—

(a) an institution which has been designated by order of the Secretary of State under section 28 of the Further and Higher Education Act 1992⁽³⁾; or

(b) an institution conducted by a further education corporation as defined by section 17(1) of the Further and Higher Education Act 1992;

“a higher education institution” means—

(a) an institution conducted by a higher education corporation as defined by section 90(1) of the Further and Higher Education Act 1992;

(b) a university; or

(c) an institution which has been designated by order of the Secretary of State as eligible to receive funding from a higher education council under section 129 of the Education Reform Act 1988⁽⁴⁾;

“non-executive director” means a director who does not provide services to the company for remuneration or other benefits;

(1) See section 212 for the definition of “regulation”; by virtue of that definition these Regulations made by the Secretary of State only apply in relation to England.

(2) 1998 c. 31.

(3) 1992 c. 13.

(4) 1988 c. 40.

“a relevant local education authority” means a local education authority which maintains any schools whose governing bodies are members of the school company;

“a school company” means a company to which these Regulations apply in accordance with Regulation 4;

“supervising authority” means the local education authority designated in accordance with Part 4 of these Regulations to supervise a school company.

- (2) For the purposes of these regulations a school is “subject to special measures” if–
- (a) a report of an inspection of the school has been made under either Part 1 of the School Inspections Act 1996⁽⁵⁾ or section 65 or 83 of the Learning and Skills Act 2000⁽⁶⁾ in which the person making it stated that in his opinion special measures were required to be taken in relation to the school; and
 - (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion; and
 - (c) the report has not been superseded by any subsequent report in which the person making it stated that in his view special measures were not required to be taken relation to the school.
- (3) For the purposes of these regulations a school “has serious weaknesses” if–
- (a) a report of an inspection of the school has been made under Part 1 of the School Inspections Act 1996 in which the person making it stated that in his opinion the school had serious weaknesses; and
 - (b) that report has not been superseded by a subsequent report stating that in the opinion of the person writing the report the school either, no longer has serious weaknesses, or stating that special measures are required to be taken in relation to the school.

Definition of “an agreement under the private finance initiative”

3.—(1) For the purposes of these Regulations “an agreement under the private finance initiative” means an agreement to which paragraph (3) or (4) of this regulation applies.

(2) In this regulation–

“asset” means–

- (a) any tangible asset, including any land, building or equipment; or
- (b) any computer software;

“works” means the construction, enhancement, replacement or installation of an asset.

(3) This paragraph applies to an agreement where–

- (a) consideration is received by the governing body of a maintained school under the agreement and that consideration includes–
 - (i) the provision or making available of an asset or the carrying out of works for the purposes of, or in connection with, the discharge of a function of the governing body; and
 - (ii) the provision of services for the purposes of, or in connection with, the discharge of the same function;
- (b) the governing body do not give to any other person any indemnity or guarantee in respect of any liabilities of the person with whom they enter into the transaction (whether those liabilities are incurred in respect of the transaction or otherwise);

(5) 1996 c. 57.

(6) 2000 c. 21.

- (c) the consideration given by the governing body under the transaction includes the payment of fees by instalments at annual or more frequent intervals;
 - (d) the fees are determined in accordance with factors which in every case include—
 - (i) standards attained in the performance of the services; or
 - (ii) the extent, rate or intensity of use of the asset, or as the case may be of the asset which is constructed enhanced, replaced or installed under the transaction; and
 - (e) the first instalment of fees falls to be paid after the services have started to be provided.
- (4) This paragraph applies to an agreement where private finance initiative credits are given to a local authority in respect of that agreement.

Companies governed by these Regulations

4. These Regulations apply in relation to any company whose members include the governing body of a maintained school which has exercised its powers under section 11 of the 2002 Act to become a member of the company, except where—
- (a) the main purpose of the members in forming the company is to enter into or facilitate agreements under the private finance initiative; and
 - (b) one of the company's objects is to enter into or facilitate agreements under the private finance initiative(7).

(7) Companies formed or joined by governing bodies of maintained schools under section 11 of the 2002 Act to which these Regulations do not apply will be governed by separate regulations which have not been made at the date of the making of these Regulations.